

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5470 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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P K DASGUPTA

Versus

STATE OF GUJARAT

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Appearance:

MR JM PANCHAL for Petitioners

Y.F.Mehta APP for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 05/11/96

ORAL JUDGEMENT

Rule. Heard the learned counsel for the parties on merits and therefore, this matter is being disposed of finally.

2. Present petition is filed by original accused nos

2,3,10 and 11 against the common order passed below exh. 14.,15,17 and 18 by the learned JMFC, Ahmedabad(Rural) Court no.3 on 24.10.1996.

3. Exh. 14,15,17 and 18 are the applications given by the original accused nos 10,11,3 and 2 respectively and by the said applications they had sought the leave of the court to allow them not to remain present on every date of the trial and thus to grant them exemption from remaining present on every date of the trial on certain terms and conditions. It is stated in the order by the learned Magistrate that the learned advocate for the complainant had taken strong objection for granting stay of the said application. The applications were fixed for hearing and after hearing both the sides the learned Magistrate was pleased to reject the said applications and hence the petitioners have come before this court.

4. Present petitioners are prosecuted by the Assistant Law Officer of the Gujarat Pollution Control Board for alleged commission of the offences under the Water(Prevention and Control of Pollution) Act 1974. Present petitioners are manager and directors of M/s Cellulose Products of India Ltd.. From the very nature of the prosecution it would be quite clear that presence of each of the present petitioner is not necessary for the trial of the accused. There is no question of any identification of the accused. The offence is committed by the company in which the petitioner 1 was working as manager and other petitioners are directors of the said company and they are joined in that capacity in the said prosecution. Learned Magistrate ought to have taken into consideration this aspect of the matter. Merely because the complainant objects, it could not be said that presence of the accused is essential on every date of the trial. No doubt presence of the accused would be necessary on the date when the plea of the accused is to be recorded and on the date when the learned Magistrate wants to examine the accused under the provisions of section 313 Cr.P.C. and on the date of the decision. The petitioner no.1 has stated in his application and has also stated before this court that though at the relevant time he was serving the company which is the main accused in the case he has left the job and he has taken another job in a company near Kolhapur. He has further stated that due to his new job it has become very difficult to get leave as well as to come to Ahmedabad on every day due to the difficulties in securing reservation and the court should also take into consideration the long distance he has to travel for attending the court. Petitioner no. 2 is 69 years old and is suffering from

heart trouble since many years. Petitioner no.3 is 86 years old. The petitioner no.4 is 79 years old and he is permanent resident of Bombay and he is also suffering from Myo cardial infraction. If all these circumstances were properly considered by the learned Magistrate, then he would not have passed the order in question. The learned Magistrate has observed in his order as under:

" I am of the view that age or general ailment cannot be considered as the only ground for exempting such type of dangerous persons from remaining present in the Court in the offence which affects public at large."

I fail to understand whether the learned Mzagistrate was understanding the meaning of the words used by him. When the offence alleged is under the Water( Prevention and Control of Polution ) Act having been committed by the company, directors of the said company could not be described as dangerous persons. If the age of the accused and if suffering from serious diseases like Myo cardial infraction Control Act) are not to be considered by the court for granting exemption, then I fail to understand what else is to be considered by the court on considering the claim of exemption. It seems that the learned Magistrate was led away on account of the objections taken by the learned advocate for the complainant and he has not at all taken into consideration the basic principles for considering for exemption from attendance. When there is no question of identification of any of the accused and when the accused are old persons and when the accused are prosecuted on account of their holding office and when accused are suffering from ailment like heart trouble, their claim for exemption ought to have been considered in their favour. I therefore, allow this petition and I exempt all the petitioners from remaining present on every date of hearing except the date on which plea of the accused is to be recorded, the date of which the statement of the accused u/s 313 Cr.P.C is to be recorded and the date on which the judgment in the matter is to be pronounced. Rule is made absolute.

(S.D.Pandit.J)